EPA Evaluation of Maryland Final Phase I Watershed Implementation Plan

Overview

Maryland developed a Watershed Implementation Plan (WIP) that includes strong agriculture contingencies, increases stormwater implementation, and proposes funding for wastewater treatment plant upgrades to support having practices in place by 2020 to meet the Chesapeake Bay TMDL allocations and by 2017 to achieve 70% of reductions.

Allocations

Maryland meets its nutrient and sediment allocations for each basin in the final TMDL. Maryland submitted proposed modifications to its nitrogen, phosphorus and sediment allocations in each of its five basins. EPA used its Water Quality and Sediment Transport Model to confirm that these modifications would still attain water quality standards. Therefore, Maryland's WIP input deck resulted in statewide loads that are 0% over modified nitrogen, phosphorus and sediment allocations.

Agriculture

Key improvements since draft WIP:

- The final Maryland WIP provides more detail on phosphorous management, strengthens contingencies, improves coordination with USDA, develops a plan for increasing staff levels, and selects a subset of strategies to implement by 2017.
- The most noteworthy improvement is Maryland's addition of a strong contingency statement that significantly bolsters EPA's reasonable assurance that agricultural targets will be met by committing to explore new policy measures and mandatory BMP compliance options. For example, these could include a regulatory change that cover crops be planted on the highest risk acres.
- EPA recognizes strengths in Maryland's agriculture programs, including an effective CAFO program and the use of BayStat to assess progress.

EPA actions: Ongoing oversight of Chesapeake Bay jurisdictions

- EPA will use its national review of CAFO State Technical Standards in 2011 and beyond to identify any deficiencies in the State Technical Standards for protecting water quality, including Maryland's phosphorus management program for protecting water quality. EPA reserves its authority to object to permits if they are not protective of water quality.

Urban Stormwater

Key improvements since draft WIP:

- The WIP includes very specific activities and milestones for urban stormwater program implementation including:
    - Renew Phase I MS4 permits to require nutrient and sediment reductions equivalent to stormwater treatment on 30% of the impervious surface that does not have adequate stormwater controls
    - Renew Phase II permits to require nutrient and sediment reductions equivalent to stormwater treatment on 20% of the impervious surface that does not have adequate stormwater controls.
    - Renew State Highway Administration Phase I and II MS4 permits to require nutrient and sediment reductions equivalent to stormwater treatment on 30% of the impervious surface that does not have adequate controls.
    - Regulate fertilizer applications on 220,000 acres of commercially managed lawns.

- The WIP includes descriptions of the policy, financing and tracking mechanisms for implementing urban stormwater retrofit programs.
- Maryland will increase watershed restoration requirements for MS4s by requiring nutrient and sediment reductions.
- Maryland commits to several actions to ensure reductions, including limits on lawn fertilizer use, use of natural filters such as riparian buffers, and stream restoration.
- If local utilities or other systems of charges are not underway by 2012, Maryland will seek legislation requiring development of local stormwater utilities via a statewide system of fees.

EPA actions: Ongoing oversight of Chesapeake Bay jurisdictions

- While satisfied overall with Maryland's demonstration of reasonable assurance, EPA notes some degree of uncertainty about the expected nutrient and sediment load reductions that will result from urban stormwater retrofits. EPA will assess how well Maryland is able to track and quantify outcomes from retrofits that are projected in the WIP.

Wastewater

Key improvements since draft WIP:

- The WIP commits to identify options to restructure the Bay Restoration Fund (BRF) fee in order to fully fund Enhanced Nutrient Removal (ENR) upgrades at 67 public major wastewater treatment plants. Options include fees based on consumption, income, or other criteria; and, in 2012, a proposed amendment to the BRF statute to change the BRF fee in order to provide funding needed to complete the upgrades.
- The WIP also includes a contingency if the Bay Restoration Fund statute is not amended in 2012.

EPA actions: Ongoing oversight of Chesapeake Bay jurisdictions

- EPA will review NPDES permit conditions to ensure that they are consistent with the loads and assumptions of the Chesapeake Bay TMDL.

General Note on EPA Actions

EPA will assess annual progress and track 2-year milestone commitments. EPA may take additional actions beyond those listed above, as described in its December 29, 2009 letter, to ensure that nitrogen, phosphorus, and sediment reductions identified in the WIP and needed to meet TMDL allocations are achieved.